

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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|-------------------------------------|---|---------------------------------|
| FEDERAL TRADE COMMISSION,           | ) | )                               |
|                                     |   |                                 |
| Plaintiff,                          | ) |                                 |
|                                     | ) |                                 |
| v.                                  | ) | CIVIL ACTION NO. 04-CV-11136GAO |
|                                     | ) |                                 |
| DIRECT MARKETING CONCEPTS, INC., et | ) |                                 |
| al.,                                | ) |                                 |
|                                     | ) |                                 |
| Defendants.                         | ) |                                 |
|                                     | ) |                                 |
|                                     | ) |                                 |

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**MOTION FOR LEAVE TO FILE SUPPLEMENTAL AFFIDAVITS IN OPPOSITION  
TO THE FEDERAL TRADE COMMISSION'S MOTION TO MODIFY THE COURT'S  
PRELIMINARY INJUNCTION AND APPOINT A RECEIVER**

The defendants Direct Marketing Concepts, Inc., ITV Direct, and Donald Barrett (collectively the “DMC Defendants”) hereby move that the Court grant them leave to serve and file a Supplemental Affidavits and Exhibits of Tim Cunningham, Leslie Axelrod and Christopher Robertson (attaching Report prepared by Michael John Glade, Ph.D.) in Opposition to the Federal Trade Commission’s (“FTC”) Motion to Modify the Court’s Preliminary Injunction and Appoint a Receiver.

The FTC filed its Motion for Modification of the Preliminary Injunction on May 26, 2005. The DMC Defendants filed their Opposition to the FTC’s Motion for Modification on June 9, 2005. The FTC filed its Reply Memorandum on June 24, 2005. The FTC filed a Supplemental Memorandum in Support of its Motion for Modification on August 25, 2005. The DMC Defendants filed a Supplemental Memorandum and Affidavits on September 29, 2005.

The DMC Defendants’ Supplemental Affidavits provides the Court with further scientific support for the health care supplements (Sea Vegg and Flex Protex) that are the subject of the FTC’s motion for a receiver. This scientific material will assist the Court in evaluating the

FTC's claim that the DMC Defendants' advertisements are misleading and lack scientific support.

WHEREFORE, the DMC Defendants respectfully request that the Motion be allowed and that the DMC Defendants be granted leave to file a Supplemental Affidavits in Opposition to FTC's Motion to Modify the Court's Preliminary Injunction and Appoint a Receiver.

Respectfully submitted,  
DIRECT MARKETING CONCEPTS, INC., ITV  
DIRECT, INC., AND DONALD W. BARRETT

By their attorney(s),

/s/ Christopher Robertson  
Peter S. Brooks, BBO #058980  
Christopher F. Robertson, BBO #642094  
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Dated: October 13, 2005

#### **LOCAL RULE 7.1 CERTIFICATION**

I, Christopher F. Robertson, counsel for DMC Defendants, hereby certify that I have conferred with opposing counsel, and counsel agreed to consent to filing of the supplemental affidavits of Christopher Robertson (attaching report prepared by Michael John Glade) and Leslie Axelrod by the DMC Defendants, however counsel have been unable to reach agreement on the filing of the affidavit of Tim Cunningham.

/s/ Christopher Robertson  
Christopher F. Robertson